ISSUE DATE: May 16, 2000

DOCKET NO. P-3009,3052,5096, 5873,3017/PA-00-170

ORDER APPROVING ASSIGNMENT OF SELECTED ASSETS AND REVOKING OR MODIFYING CERTAIN CERTIFICATES OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner

In the Matter of LCI International Telecom Corp., Phoenix Network, Inc., Qwest Communications Corporation, TeleDistance, Inc., and USLD Communications, Inc. Application for Approval of Assignment of Selected Assets to TeleDistance, Inc.

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PROCEDURAL HISTORY

On February 9, 2000 Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc (collectively, "Qwest Subs") and TeleDistance, Inc. ("TeleDistance") filed an application for approval of assignment of selected assets of Qwest Subs to TeleDistance. Qwest Subs and TeleDistance are all direct or indirect subsidiaries of Qwest Communications International Inc. (Qwest).

On March 17, 2000, AT&T Communications of the Midwest, Inc. (AT&T) filed a petition to intervene.

On March 27, 2000, the Qwest subs and TeleDistance filed an opposition to AT&T's petition to intervene.

On April 3, 2000, the Department of Commerce (DOC) submitted comments recommending that the application of the Qwest Subs to transfer selected assets to TeleDistance be approved subject to certain conditions. Further, the DOC recommended that upon completion of the transfer of assets, the certificates of authorities of the Qwest Subs be revoked.

On April 6, 2000, AT&T withdrew its petition to intervene.

On April 13, 2000, Qwest Communications International Inc. ("Qwest"), the parent company of the Qwest Subs, submitted reply comments on the issue of the DOC's recommendation that the Certificates of Authority of the Qwest Subs be revoked.

On April 25, 2000, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

Qwest and its subsidiaries are facilities-based multimedia communication services providers that provide Internet Protocol-enabled services such as Internet access, web hosting, co-location and remote access. They provide a full range of voice, data, image and related services to businesses, government agencies and consumers. They also provide high-volume voice and conventional private line services to other communications providers, Internet service providers and other data service companies. They have constructed a nationwide fiber optic network connecting 150 cities across the United States.

Each of the Qwest Subs herein has been granted a certificate of authority by the Commission.

Qwest and U S WEST Communications, Inc. (U S WEST) have entered into a merger agreement, the approval of which is pending before the Commission in another docket.[1] Prior to the consummation of this proposed merger, Qwest must divest itself of all prohibited interLATA assets in order to comply with Section 271 of the Federal Telecommunications Act of 1996 (1996 Act).[2] To effectuate this divestiture, Qwest has established a new direct subsidiary, TeleDistance Holdings, Inc. ("TD Holdings") to serve as a holding company for TeleDistance, the operating subsidiary. The grant by the Commission of this Asset Assignment Application will permit the transfer of those interLATA assets prohibited by § 271 of the 1996 Act from the Qwest Subs to TeleDistance. TD Holdings and TeleDistance will then be sold to an independent third party [3] in order to complete the divestiture process.

On February 9, 2000, TeleDistance filed a concurrent application for authority to provide telecommunications services in Minnesota. In an Order dated May 1, 2000, the Commission granted TeleDistance's request for a certificate of authority to provide statewide interexchange and local niche services.[4]
It is expected that all of the steps in the divestiture process -- the certification of TeleDistance to

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[1] Pending before the Commission in docket No. P-3009,3052,5096,421,3017/PA-99-1192, In the Matter of the Merger of the Parent Corporation of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. and US West Communications, Inc.

[2] Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of title 47, United States Code).

[3] TeleDistance/TD Holdings filed for Commission approval of transfer of its stock to Touch America, Docket No. P-3009, 5096, 5546, 5873/PA-00-315. Touch America is a wholly owned subsidiary of Entech, Inc. which is a wholly owned subsidiary of Montana Power Company.

[4] In the Matter of a Request by TeleDistance, Inc. for Approval for a Certificate of Authority to Provide Interexchange and Local Niche Services, Docket No. P-5873/NA-00-169, ORDER APPROVING A CERTIFICATE OF AUTHORITY ALONG WITH THE TARIFF FILED ON FEBRUARY 9, 2000 AND REVISED ON MARCH 9, 2000, AND THE TARIFF MODIFICATIONS RECEIVED APRIL 14, 2000 AND APRIL 19, 2000 (May 1, 2000).

provide telecommunication services, the assignment of assets from the Qwest Subs to TeleDistance, and the sale of TD Holdings to Buyer -- will take place immediately prior to the consummation of the proposed merger between Qwest and U S WEST.

The interexchange businesses to be assigned to TeleDistance are comprised of retail and wholesale switched interLATA (and in certain instances intraLATA) long distance services, including 1+ and toll free services, as well as retail and wholesale calling card services, retail and wholesale private line services, frame relay/ATMP transmission services, prepaid calling card services, operator services and Internet services. All of the Qwest Subs' customers that subscribe to or use these services will be transferred to TeleDistance. There will be no change to the billing and service practices as they relate to customers of the Qwest Subs. It is TeleDistance's intent to adopt the tariffs of the Qwest Subs currently in effect that relate to the services transferred.

II. Position of the Parties

A. Department of Commerce

The DOC concluded that the Qwest Subs have met the requirements for prior Commission approval before the sale or exchange of assets as required by Minn. Stat. § 237.74, subd. 12. The DOC recommended approval of the assignment of selected assets to TeleDistance subject to the following conditions:

1. TeleDistance is responsible for any Qwest Subs' unpaid regulatory fees;

2. TeleDistance is responsible for submitting new tariffs reflecting its name in place of the services previously offered by Qwest Subs; and

3. Once the new authority is granted to TeleDistance and upon the completion of the transfer of assets, the authorities of Qwest Communications Corporation, and the Qwest Subs (LCI International Telecom Corporation, USLD Communications, Inc. and Phoenix Network, Inc.) are revoked.

B. Qwest Communications International Inc.[5]

Qwest Communications International Inc. (Qwest) did not object to the revocation of the operating certificates of Phoenix Network, Inc., USLD Communications, Inc. and LCI International upon consummation of the proposed merger with US West. However, it requested that the Commission not revoke the operating certificate of Qwest Communications Corporation (Qwest Corp.) in order to enable Qwest Corp. to continue to provide telecommunications services, not prohibited by Section 271 of the 1996 Act, as an affiliate of Qwest.

Qwest indicated that although Section 271 of the 1996 Act required Qwest to divest its interLATA business in the U S WEST region prior to consummating its proposed merger with U S WEST,

[5] Parent Company of Qwest Subs (Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc. and Phoenix Network, Inc.) as well as TD holdings and TeleDistance.

Section 271 does not prohibit the combined company from providing other non-interLATA telecommunications services such as intraLATA interexchange and intraLATA private line services in that region. Although final decisions on how the combined company will provision such services in Minnesota have not been made, for business reasons Qwest would like to retain the option of providing these services through a separate affiliate after the merger closes without having to experience any delay that may be associated with obtaining a new certificate.

Qwest indicated that it accepted responsibility for abiding by all Commission rules associated with the retention of this certificate, including filing an amended tariff, paying all regulatory fees and abiding by all affiliate rules.

Qwest further indicated that customers would be given notice of the transfer from TD Holdings to the third party buyer pursuant to rules of the Federal Communications Commission (FCC). Because the transfer of assets from the Qwest Subs to TeleDistance and the subsequent transfer from TD Holdings to a third party buyer will be consummated immediately prior to the closing of the Qwest/U S WEST merger, Qwest argued that it would be counter-productive to the divestiture process to require notice of this transfer of assets to TeleDistance. For this reason, Qwest requested that the Commission not apply the requirements of the Minnesota antislamming statute to this transfer. [6]

C. AT&T

On March 17, 2000, AT&T Petitioned to intervene in this matter. AT&T withdrew its Petition on April 5, 2000. The basis for the withdrawal of its petition to intervene was AT&T's belief that its concerns will be addressed by the FCC in its ongoing review of the proposed merger.

III. Commission Analysis

A. Financial Viability

Four Qwest Subs that hold Certificates of Authority to operate in Minnesota are requesting approval to assign certain interLATA assets to TeleDistance, another subsidiary of Qwest. This transfer of assets is subject to Commission approval pursuant to Minn. Stat § § 237.23 and 237.74, Subd. 12. The DOC reviewed this request to determine if the acquisition threatened the surviving company's ability to provide reliable telecommunications services to Minnesota customers. Since this is to be an internal reorganization, the same consolidated financial statements that apply to the Qwest Subs before this restructuring would apply to TeleDistance after the restructuring. The DOC, after reviewing the consolidated financial statements of Qwest, indicated adequate support for Qwest's financial viability throughout this process. The Commission agrees.

B. Notice to Customers

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[6] Minn. Stat. § 237.661 subd. 2

There will be notice to customers of the Qwest Subs, immediately prior to the closing of the pending Qwest/U S WEST merger, indicating the transfer of accounts to a third party buyer. This notice will be made to enable Qwest to obtain a waiver of the FCC's Letter of Authorization requirement and will state:

- that a carrier change is taking place;
- that the customer's rates will not change as a result nor will this change result in any charges to the customer;
- that the customer has the right to change his or her presubscribed long distance carrier, if desired ; and
- a toll free number for questions.

There is, however, no intention to provide notice to the customers of the Qwest Subs of the transfer of their accounts from any of the Qwest Subs to TeleDistance.

Minnesota antislamming statute[7] provides in part:

Subd. 2.

(a) A telecommunications carrier may request that the telephone company serving a customer process a change in that customer's long distance provider, if the customer has authorized the change either orally or in writing signed by the customer. Prior to requesting a change in a customer's long-distance service provider, the carrier must confirm:

(1) the customer's identity with information unique to the customer, unless the customer refused to provide identifying information, then that fact should be noted;

(2) that the customer has been informed of the offering made by the carrier;

(3) that the customer understands that the customer is being requested to change communication carriers;

(4) that the customer has the authority to authorize the change; and

(5) that the customer agrees to the change.

[7] Minn. Stat. § 237.661, subd.2

(b) After requesting the change in long-distance service provider, the carrier must:

(1) notify the customer in writing that the request has been processed; and

(2) be able to produce, upon complaint by the customer, evidence that the carrier verified the authorization by the customer to change the customer's long-distance service provider. If the carrier used a negative check-off verification procedure as defined in subdivision 4, paragraph (c), the evidence must include a tape recording of the initial oral authorization.

The asset transfer contemplated in this application is part of an internal company restructuring within Qwest. The customers are being transferred from several wholly-owned subsidiaries of Qwest to another wholly-owned subsidiary of Qwest. The statute herein addresses " a change in long distance provider" but does not address whether such an internal restructuring constitutes such a change. There will be no change in customers' rates, the customer complaint line or any change to billing and service practices. The change, as far as the customer is concerned, will be in name only. This unique fact situation is not the situation contemplated by the anti-slamming statute and the Commission concludes that the statute does not be apply in this circumstance. [8]

C. Revocation of Certificates of Authority

The Commission recognizes that the 1996 Act does not prohibit Qwest from providing intraLATA interexchange and intraLATA private line services within U S WEST's fourteen state region following the close of the proposed merger between Qwest and U S WEST. The Commission further recognizes that after the completion of the proposed merger, the combined company may want to offer services that are not prohibited through one of the subsidiaries presently operating in Minnesota. The Commission, in order to avoid delays and the potential for disruption of service, will allow the certificate of authority of Qwest Communications Corporation (Qwest Corp.) to remain in effect in order to enable the merged company to offer non-prohibited services, provided that the certificate of authority of Qwest Corp. shall be subject to the condition that it shall not be permitted to offer services prohibited by Section 271 of the 1996 Act.

For these reasons, the Commission will order that Qwest Corp.'s certificate and tariff shall be revoked to the extent necessary to prevent the company from providing services that it will be prohibited from providing under § 271 of the 1996 Act following consummation of the proposed merger. The Commission will also direct that Qwest Corp. file a revised tariff to reflect these conditions within 60 days of the close of the proposed merger.

Since Qwest Corp.'s certificate of authority will remain in effect subject to the condition discussed above, Qwest Corp. will continue to remain responsible for any of its unpaid regulatory fees. TeleDistance, however, will be responsible for any unpaid regulatory fees of the remaining Qwest Subs (LCI International Telecom Corp., USLD Communications, Inc. and Phoenix Network, Inc.). The Commission will so order.

ORDER

1. Approve the assignment of selected assets from the Qwest Subs to TeleDistance subject to the following conditions:

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[8] Of course, different considerations apply to a transfer to a third party buyer.

- Qwest Corp. is responsible for any of its unpaid regulatory fees;

- TeleDistance is responsible for the unpaid regulatory fees of LCI International Telecom Corp., USLD Communications, Inc. and Phoenix Network, Inc.;

- TeleDistance is responsible for submitting new tariffs to reflect the name change to the tariffs;

- The certificates of authority of LCI International Telecom Corp., USLD Communications, Inc. and Phoenix Network, Inc. are revoked upon the grant of new authority to TeleDistance by the Commission and the transfer of assets contemplated herein.

2. Qwest Corp. shall retain its certificate of authority, after the consummation of the proposed Qwest/U S WEST merger, subject to the following condition:

    - Qwest Corp. shall not be permitted to offer services prohibited by Section 271 of the 1996 Act.

3. The certificate and tariff of Qwest shall be revoked to the extent necessary to prevent the company from providing services that it will be prohibited from providing under Section 271 of the 1996 Act.

4. Qwest Corp. shall file a revised tariff to reflect the conditions contained in this Order within 60 days of the close of the proposed Qwest/U S WEST merger.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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